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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,842	09/26/2003	Kelvin Craig Brodersen	64368-3	1324

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EXAMINER

SELF, SHELLEY M

ART UNIT PAPER NUMBER

3725

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/672,842

Applicant(s)

BRODERSEN, KELVIN CRAIG

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-19, 21-25, 30-35, 39-44, 48, 49, 51 and 52 is/are pending in the application.
- 4a) Of the above claim(s) 16, 20, 26-29, 36-38, 45-47, 50, 53 and 54 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 is/are allowed.
- 6) ☒ Claim(s) 13-15, 17-19, 21, 24, 30, 39-44, 48, 49, 51 and 52 is/are rejected.
- 7) ☒ Claim(s) 22, 23, 25 and 31-35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on January 19, 2005 has been carefully considered but is ineffective to overcome the prior art reference and an action on the merits follows.

### ***Election/Restrictions***

Claim 1 is generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 9-12 directed to the species of Figure 18 are no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim. However, claims 1, 6 20, 26-29, 36-38, 45-47, 50, 53 and 54, directed to the species of Figures 11-17 and 19-21 remain withdrawn from consideration since the claims depend upon an non-elected species.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 13-25, 30-44 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention as noted in the previous Office Action. The claims are confusing in that they use terminology other than that within the specification, i.e., it is not clear whether the spur arm (clms. 30, 39, 48) is the same as the spur bar as no such spur arm is defined within the specification. The same confusion results with the terms, anchor arm, anchor member and head member. Examiner suggests use of terms defined within the specification. Clarification is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-15, 17, 24, 39-41, 44, 48, 49, 51 and 52 as best as can be understood are rejected under 35 U.S.C. 102(b) as being anticipated by Tomcheck as noted in the previous Office Action.

***Allowable Subject Matter***

Claims 1-12 are allowed.

Claims 22, 23, 25 and 31-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and if the 35 U.S.C. 112 rejection(s) were overcome.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose or fairly suggest a bending jack comprising a spur head portion positioned above and away from the spur bar as set forth in claim 1. Additionally, the prior art of record does not disclose or fairly suggest as stop as set forth in claims 22, 23, 25 and 34.

Tomcheck discloses a bending jack having a handle (11), push arm (15), spur (12) and spur head (12'). Tomcheck discloses the spur head to be positioned below the push arm and not above as set forth in claim 1. Additionally, Tomcheck is silent to any stopping means for limiting movement/rotation of the push arm.

Fredericks discloses a bending jack having handle (D) attached to a push arm (C) and spur arm (A) wherein the spur arm has a spur head portion (a') that is located even to that of the push arm. Accordingly, Fredericks fails to disclose the invention as set forth in claim 1.

Neither the prior art nor any combination thereof discloses the claimed invention as set forth in claims 1, 22, 23, 25, 30 and 34. Accordingly the claims contain allowable subject matter over the prior art of record.

### ***Response to Arguments***

Applicant's arguments, filed January 19, 2005, with respect to claim 1, 13, 30, 39 and 48 have been fully considered. With respect to claims 1 and 30 Applicant's arguments are persuasive. Accordingly the 35 U.S.C. 102 rejections of claims 1 and 30 have been withdrawn.

As to claims 13 and 39, the remarks are deemed non-persuasive. Applicant argues that the prior art reference, Tomcheck fails to disclose "a portion of the push arm adjacent to the spur head member is position below the spur head portion such that the spur head portion can be engaged for driving the spur into engagement with the support surface without interference by the push arm." This argument is persuasive, however claims 13, 30, and 39 fail to positively recite this limitation. For example, claim 13, states, "*...a spur head member projecting in a second direction...and beyond the push arm...*", claim 39 states, "*...head member projecting from the anchor arm...beyond the push arm...*" and claim 48 states, "*...a push head member spanning between the first end portions of the first and second push arm members...*" Claim 48 fails to recite any spur head. Applicant is arguing structure not positively recited within the claims, therefore Applicant's remarks are found non-persuasive.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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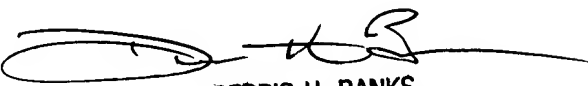
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIE or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf

March 16, 2005



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